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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1969

No. [redacted]
176

JOHN IKE GRIFFITH,
Petitioner

v.

BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, JOHN IKE GRIFFITH, in Case Number Third Division, Number 303, Supreme Court of Alabama, prays that a writ of certiorari be issued out of and under the seal of this Court to review the judgment and opinion of the Supreme Court of Alabama, entered in the above case on February 6, 1969, which affirmed a resolution adopted by the Board of Bar Commissioners of the State of Alabama as follows:

> "BE IT RESOLVED by the Board of Commissioners of the Alabama State Bar, in executive session, having heard and considered all of the material and competent testimony introduced in the cause entitled *In the Matter of* John Ike Griffith, Attorney, that the said Board now, in executive session, and at which no one not a member of this Board is present, reached its de-

cision and conclusion that the said John Ike Griffith, having been found guilty of the charges preferred against him in this cause be and is hereby disbared." (R. p. 504).

The application of your petitioner for rehearing was denied by the Supreme Court of Alabama on March 6, 1969. (Appendix A p. 13).

OPINIONS BELOW

The opinion of the Supreme Court of Alabama (Appendix A, *infra* pp. A-1-A10) has been reported at *In The Matter of John Ike Griffith,* 219 So. 2d 357 (Alabama 1969).

JURISDICTION

The judgment of the Supreme Court of Alabama in this case (Appendix A, *infra,* pp. A11) was entered on February 6, 1969.

A timely petition for rehearing was denied on March 6, 1969, (Appendix A, *infra,* p. A13).

The jurisdiction of this Court is invoked under Title 28 U. S. Code, Section 1257 (3).

QUESTIONS PRESENTED

A.

Is an attorney at law in Alabama in a disbarment proceeding, entitled to a trial by jury?

B.

May an attorney at law, consistent with the due process and equal protection clauses of Amendment XIV, Constitution of the United States be proceeded against in a disbarment action where the thrust of the complaint against him is a violation or violations of a rule of conduct of the Board of Commissioners of the State Bar, approved by the Supreme Court of Alabama, which said rule is "contra" to the interpreted statutory law of the State of Alabama?

C.

May an attorney, consistent with the due process and equal protection clauses of Amendment XIV, Constitution of the United States, be regulated, investigated, charged, tried, convicted and punished by the Board of Commissioners of the Alabama State Bar in a proceeding quasi criminal in nature, when said Board of Commissioners maintains no separation of its executive, legislative or judicial powers?

D.

May an attorney, consistent with the due process and equal protection clauses of Amendment XIV, and Amendment VI, Constitution of the United States, be proceeded against in disciplinary proceedings in which his right to be confronted with witnesses against him, is to some extent measured by his own financial resources, and in which he is denied the opportunity to make objections to objectionable testimony offered by witnesses, when the final judgment of punishment to be meted out to him is based upon depositions containing that same evidence by a Board who has not observed any of the witnesses in person?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisions, statutes and rules involved are set forth below (Appendix B, *infra,* pp. B1, *et seq.*).

STATEMENT OF THE CASE

The grievance committee of the Alabama Bar Association instituted disbarment proceedings against the petitioner, John Ike Griffith, before the Board of Commissioners of the Alabama State Bar on July 10, 1964, (R. pp. 8-21); amended the complaint on January 15, 1965, (R. pp. 26-47); amended the complaint on May 29, 1966, (R. pp. 259-262); and further amended the complaint on March 30, 1967 (R. pp. 380-382).

The charges against petitioner complained of violations of two rules of the Board of Commissioners of the Alabama State Bar, viz:

RULE 25, SECTION A, as last amended:

25. No person heretofore or hereafter admitted to practice law in Alabama shall,

(a) Knowlingly or wilfully make any false representations of fact to any judge, court or jury to induce a favorable action or ruling by either;

(b) File or prosecute or aid in the filing or proceeding seeking a divorce in a Court in Alabama as attorney or solicitor for a complainant or cross complainant therein or serve as referring or forwarding attorney for such complainant or cross complainant with knowledge or reasonable cause to believe that neither party to such suit, cross bill, or proceeding is at the time of the filing of the bill of complaint or cross bill of complaint therein, a bona fide resident of the State of Alabama;

(c) While acting as attorney for either party in any suit for divorce in any Court in Alabama represent to the Court that either party to such suit is a bona fide resident of Alabama, knowing such representation to be false.

RULE 36, SECTION A, as last amended:
36. No person licensed to practice law in the courts of the State of Alabama shall be guilty of any conduct unbecoming an attorney at law.

The gravamen of the complaint against petitioner was that he:

"***served as referring or forwarding attorney for the complainant wherein the bill of complaint represented (to a court in Alabama) that either the complainant or respondent was a bona fide resident of the State of Alabama, when, in truth and in fact, the said attorney knew or had reasonable cause to believe that in one or more, if not all, of said cases, neither the complainant nor the respondent was a bona fide resident of the State of Alabama." (R. p. 32).

On January 25, 1965, the president of the Board of Commissioners filed with the Secretary of the Alabama

State Bar an order appointing a Commissioner to take testimony in the proceedings. (R. p. 7). On January 26, 1965, the Board of Commissioners of the Alabama State Bar, through representative counsel, filed a notice to take the deposition of petitioner, John Ike Griffith, (R. p. 3); and a subpoena duces tecum directed to John Ike Griffith. (R. p. 5). On February 4, 1965, petitioner John Ike Griffith filed motions to quash the service of notice of taking his deposition. (R. pp. 48-50). (Those matters in the record relating to the Board of Commissioners' attempt to compel petitioner John Ike Griffith to testify in said proceedings were finally disposed of by this Court's decision in *Spevack v. Klein,* 385 U. S. 511, 87 S. Ct. 625, 17 L Ed 2d 574, decided during the progress of these proceedings.) On the same day petitioner filed a Motion to Quash directed to the original complaint filed against him by the Board of Commissioners of the Alabama State Bar, (R. pp. 52-76), and his demand for a jury trial. (R. p. 76). In said motion petitioner at the first opportunity raised the constitutional issues presented here as follows, in part:

> "12. For that the bringing of the accused to trial under the statute relied upon and by the charges set forth deprives him of his rights as a citizen of the United States and of the State of Alabama granted by the 6th and 14th Amendments to the Constitution of the United States.
>
> 13. For that the proceeding is void in that it does not provide for a trial by jury of the issues alleged, and violation of the rights of the accused attorney under the Constitutions of the State of Alabama and of the United States.
>
> 14. For that the charges are so indefinite, vague, uncertain and informal as to lack the essentials of due process of law.
>
> 18. For that Section B, Rule 18, making the "opinion" of the Board the sole measure of the relevancy, materiality or competency of testimony sets up a standard for testimony so indefinite, unascertainable and subject to change that the accused attorney is denied a trial ac-

cording him due process and equal protection of the laws as guaranteed to him by the Constitutions of the State of Alabama and the United States.

41. For that the rule the respondent is charged with violating is void and unconstitutional, and beyond the power of the Board of Commissioners to make and enforce for that it seeks to impose upon attorneys practicing in the field of divorce law the burden of insuring or presenting at his own jeopardy the testimony of every witness in any case in which he appears, whether a solicitor for complainant or respondent, and whether the witness is his own or otherwise, as to the jurisdictional requirements of residents and said duty of burden is imposed only upon an attorney practicing divorce law and handling a divorce case and is not made applicable to any other field of the law, or the practice of law generally.

88. For that the act of the legislature depriving the respondent of the right to trial by jury and disbarment proceedings is contrary to the Constitution of the United States and the Constitution of Alabama and is void.

94. The act of the legislature creating a Board of Commissioners and empowering said Board to legislate or pass rules of conduct, to investigate and charge attorneys with violation of said rules, and to try and punish attorneys for violation of said rules is contrary to the Constitutions of the State of Alabama and the United States and is void in that it violates constitutional requirements for operation of the legislative, judicial and administrative branchs of government combining the powers of all into one."

DEMAND FOR JURY TRIAL

Comes now the respondent, John Ike Griffith, acting by and through his attorney, and respectively demands a trial by jury of all the issues of fact in this cause which were triable by jury under the provisions of the Constitution of the United States of America and the Constitution of Alabama and the Law of Alabama."

No ruling was ever made on said Motion to Quash on its merits by the Commissioner appointed to take testimony. Proceedings were had intermittently thereafter before said Commissioner in Birmingham, Jefferson County, Alabama and by deposition before notaries public in Patterson, New Jersey (R. 330-349) and Auburn, New York (R. 296-304), through May 5, 1967. The testimony was then submitted to the full Board of Commissioners of the Alabama State Bar in the form of a typed record of the proceedings.

The proceedings before the full Board of Commissioners were held in Montgomery, Alabama. On July 11, 1967, petitioner John Ike Griffith filed a Plea in Abatement (R. p. 476-477) attacking the new venue of the proceedings as follows in part:

> "3. That respondent, John Ike Griffith, has a constitutional right to have these proceedings conducted in Jefferson County, Alabama, where he resides.
>
> 5. That the respondent, John Ike Griffith, has not waived his constitutional right to insist that he be tried on the charges now pending against him in the county where he resides, to-wit: Jefferson County, Alabama."

Simultaneously therewith, the petitioner John Ike Griffith filed a new motion to quash the complaints, accusations, and charges as amended theretofore filed against him on July 10, 1964, and as amended on January 15, 1965, May 29, 1966, and March 30, 1967, (R. pp. 478-501) and demanded a trial by jury. (R. p. 501).

Again at this state of the proceedings petitioner raised and preserved the constitutional questions now presented to this Court by motion to quash in the following manner, in part:

> "8. For that the rule of the Supreme Court, under which this prosecution is brought, is in conflict with and is void as against the provisions of the statutory law of the State of Alabama; namely Title 34, Section 29, Code of 1940, as amended.
>
> 9. For that the complaints do not sufficiently inform the accused attorney as to the charges made against him

in order for said charges to comply with the requirements of due process of law.

13. For that the proceeding is void in that it does not provide for a trial by jury of the issues alleged, and violation of the rights of the accused attorney under the Constitutions of the State of Alabama and of the United States.

17. For that Section B, Rule 18, of the rules governing the conduct of attorneys in Alabama, making the "opinion" of the Board effective measure of the relevancy, materiality or competency of testimony, does not provide for a hearing on testimony taken in keeping with due process of law.

42. For that the rule the respondent is charged with violating is void and unconstitutional, and beyond the power of the Board of Commissioners to make and enforce for that it seeks to impose upon attorneys practicing in the field of domestic relations the burden of insuring or presenting at his own jeopardy the testimony of every witness in any case in which he appears, whether a solicitor for complainant or respondent, and whether the witness is his own or otherwise, as to the jurisdictional requirements of residence and said duty or burden is imposed only upon an attorney practicing divorce law and handling a divorce case and is not made applicable to any other field of law, or to the practice of law generally.

89. For that the act of the legislature depriving the respondent of the right to trial by jury in disbarment proceedings is contrary to the Constitution of the United States and to the Constitution of Alabama and is void.

DEMAND FOR JURY TRIAL

Comes now the respondent, John Ike Griffith, acting by and through his attorney, McCullough & McCullough, and respectively demands trial by jury of all the issues of fact in this cause which are triable by a

jury under the provisions of the Constitution of the United States of America and the Constitution of Alabama."

No responsive pleading was filed by the Board of Commissioners to the aforementioned Plea in Abatement and Motion to Quash filed by petitioner John Ike Griffith.

On July 19, 1967, a special meeting of the Board of Commissioners of the Alabama State Bar was held at the State Bar Headquarters in Montgomery, Alabama. At the conclusion of the arguments by counsel for the respective parties the Motion to Quash and Plea in Abatement filed by petitioner were overruled and the above quoted resolution of disbarment of petitioner was adopted by the Board of Commissioners.

Petitioner John Ike Griffith thereafter sought review in the Supreme Court of Alabama of the resolution of disbarment adopted by the Board of Bar Commissioners. The opinion and judgment of the Supreme Court of Alabama affirming the resolution of disbarment was entered on February 6, 1969, (Appendix A pp. A1-A10). Thereafter a timely application for rehearing was denied without opinion by the Supreme Court of Alabama on March 6, 1969 (Appendix A, pp. 13).

REASONS FOR GRANTING THE WRIT

Question A

The right of an attorney in Alabama to a trial by jury in disbarment proceedings was guaranteed to him by law before Alabama became a State. "'Toulmin's Digest of the Laws of Alabama," p. 22. This provision for a jury trial for attorneys in disbarment proceedings remained in the law of Alabama until adoption of the 1923 Code of Alabama when the Alabama legislature created the integrated Bar in Alabama and created the disciplinary procedures presently used in Alabama. The 1923 Alabama Code deleted the statutory provision respecting jury trials in disbarment proceedings. During this period the Alabama Consti-

tution of 1901 was adopted. Article 1, Section 11 of the Constitution of 1901 provides as follows:

"That the right of trial by jury shall remain inviolate."

This attempt by the State of Alabama through its legislative arm to remove said right of trial by jury from the law of Alabama, which was a pre-existing right, amounts to a denial by the State of Alabama, through its legislative arm, of due process to petitioner and is an abridgment by the State of Alabama of a pre-eyisting right of petition in violation of Amendment XIV, Constitution of the United States.

Petitioner raised this question at his first opportunity. (R. pp. 76, 77).

In its opinion (Appendix A, pp. A1-A10), the Supreme Court of Alabama disposed of petitioners contention that he was entitled to a trial by jury by reaffirming its previous declaration on the point in *Ex Parte Thompson,* 228 Ala. 113, 152 So. 229, where it was held:

"***That the courts have the inherent power to suspend or to remove attorneys without trial by jury.***"

Petitioner recognizes the inherent power of courts to discipline attorneys generally but submits that such is not the case in a jurisdiction such as Alabama where the right to a trial by a jury was granted by statutory enactment to attorneys and subsequently guaranteed to them Article 1, Section 11, Alabama Constitution 1901 as above quoted.

The Alabama Supreme Court in *Ex Parte Thompson,* supra, held that Article I, Section II of the Alabama Constitution of 1901 did not apply to all statutory law existing at the time of the adoption of the Constitution; but only to those cases in which a litigant would have been entitled to a trial by jury at common law.

Petitioner submits that the denial to him of a trial by jury is not consistent with due process, and equal protection provisions of Amendment XIV, Constitution of the United States.

Question B

Title 34, Section 27, Code of Alabama, 1940, as amended, (Appendix B, *infra,* p. B2); and Title 34, Section 29, Code of Alabama, as amended, (Appendix B, *infra,* p. B2) have been interpreted by the Supreme Court of Alabama in *Levy v. Levy,* 256, Ala. 629, 59 So. 2d 344 and *Hilley v. Hilley,* 275 Ala. 617, 157 So. 2d 215, to require no particular or specific period of residence in Alabama of a complainant in a divorce proceeding where the the respondent is a non-resident when the Court has jurisdiction over both parties to the cause of action, the only jurisdictional requirement being that the complainant be domiciled in the State of Alabama in order to confer upon the Court jurisdiction over the "res.". In accord with such interpretation, the Supreme Court of Alabama has refused to set aside a decree of divorce where one of the parties thereto objected. *Aiello v. Aiello,* 272 Ala. 505, 133 So. 2d 18. Rule 25 of the Board of Commissioners of the Alabama State Bar (Appendix B, *infra,* p. B6) is, therefore, causing conduct of an attorney in procuring divorces, unless he is capable of probing the mental operations of his client and thereby ascertaining his true intentions as to future indefinite residence in the State of Alabama, to be demoninated unethical and to subject himself to disciplinary proceedings and disbarment, even though the decree of divorce he has obtained for his client is valid for all intents and purposes under the applicable statutory provisions. This burden is not placed upon attorneys practicing in other fields in Alabama, nor is it placed upon the practice of law generally. Petitioner submits that this clearly violates his rights guaranteed by the due process and equal protection clauses of Amendment XIV, Constitution of the United States.

Question C

The Board of Bar Commissioners of the Alabama State Bar exercises its administrative, legislative and judicial powers in the performance of its duties, as outlined by the legislature of the State of Alabama in Title 46, Section 25, Code of Alabama, 1940, (Appendix B, *infra,* pp. B2).

The Board of Bar Commissioners of the Alabama State Bar is unconstitutionally composed because it is established in violation of the doctrine of separation of powers, and in further violation of other state and federal constitutional provisions.

Article 6, Section 139, of the Constitution of Alabama, 1901, provides:

> "The judicial power of the state shall be vested in the Senate sitting as a Court of Impeachment, a Supreme Court, Circuit Courts, Chancery Courts, Courts of Probate, such courts of law and equity inferior to the Supreme Court, and to consist of not more than five members, as the legislature from time to time may establish, and such persons as may be by law invested with powers of a judicial nature . . ."

Article 3, Section 42, Constitution of Alabama, 1901, provides:

> "The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another."

Article 3, Section 43, Constitution of Alabama, 1901, provides:

> "In the government of this state, except in the instances in this constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise and legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that this may be a government of laws and not of men."

The Supreme Court of Alabama in its opinion (Appendix A, pp. A1-10) relied on *Ex parte Thompson,* 228

Ala. 113, 152 So., 229, in holding that the legislature acted within constitutional bounds in its creation of the Board of Commissioners of the Alabama State Bar, and the grant of powers to it. The Alabama Supreme Court relied upon the last phrase quoted above in Article VI, Section 139 of the Constitution of Alabama 1901 as finding expressed constitutional warrant for confering judicial functions upon the Boad. No comment was made about the executive and legislative functions of the Board save that the act creating the Board of Commissioners of the Alabama State Bar transgressed no constitutional grounds.

The legislative, executive and judicial authority is exercised concurrently and to the same end, as in the case in the instant proceeding, the constitutional provisions relating to separation of powers become of paramount importance.

It is axiomatic that an act or law may be constitutional on its face, yet unconstitutional in its application.

In practice, the Board of Commissioners of the Alabama State Bar is an autonomous and plenary organ of the State of Alabama in dealing with the members of the Bar. The Board of Commissioners, subject to approval by the Supreme Court of Alabama, promulgate the rules governing conduct of attorneys, a clearly legislative function; they can carry out provisions for the implementation of said rules, clearly an executive function; investigate, prosecute, deliberate, and pass judgment against any member of the Bar charged with a breach of the provision so promulgated. Title 46, Section 25, Code of Alabama 1940, grants disciplinary power to the Board, the scope of such power extending from reprimand to the supreme punishment of disbarment; and this without the intervention of the Supreme Court of Alabama, save for its approval of the regulations promulgated by the Commissioners. Review by the Supreme Court of Alabama on the decision of the Board is not mandatory, and that Court can act only on petition of the agrieved attorney, or ex mero motu. Therefore, the Board sits as a law maker, prosecutor, judge, jury, and executioner all at the same time. Petitioner submits that this is defacto and abuse of the separation of powers doctrine advanced by the above quoted constitutional provisions, and by the

Constitution of the United States, and in effect is a substantial deprivation of substantive and procedual due process to petitioner in the instant action.

Question D

The Supreme Court of Alabama in *Ex parte Messer,* 228 Ala. 16, 152 So. 244, has denominated disbarment proceedings as quasi criminal in nature. The opinion in *Messer* further set forth:

> "The rules governing the admissibility of evidence and the tests of its revelancy are the same in civil actions and criminal prosecutions, that is, whether the testimony offered induces to the proof of a pertinent hypothesis, which, if sustained, will influence the issue."

Thus, in disbarment proceedings, which are quasi criminal in nature, the same rules of evidence obtain as if the cases were either civil or criminal in nature. In the instant case, petitioner was deprived of the benefit of the rules of evidence whether under a civil or criminal standard, by the absolute impotence of any of his objections and of the refusal of the Commissioner to rule on them on the grounds that he had no power to do so. (R. p. 146). As a result, illegal and irrelevent testimony was introduced which was highly prejudicial to petitioner and scandalous in nature, and could not but influence the outcome of the hearings adversely to the petitioner.

Due process of law has been defined as "fair play and substantial justice" *International Shoe Company v. Washington,* 326, U. S. 310, 66 S. Ct. 154, and in no wise can the hearing accorded petitioner be construed to comply with the standards of fair play and substantial justice. The testimony of James V. Mecelli (R. pp. 175-209), the deposition of Linda Bowden, (R. pp. 296-304), and the testimony of Janet Dasher, (R. pp. 388-447), are replete with heresay, conclusions, uncommunicated mental operations, and other illegal evidence to which petitioner timely objected; but which was entered into the record over petitioner's objection and request that a ruling be made, which ruling was not made.

Petitioner submits that in a blanket reception of all evidence offered to the Commissioners and the fact that none of the witnesses appeared before the Board he was deprived of procedural and substantive due process and denied the equal protection of the law, which rights are guaranteed by Amendment VI and Amendment XIV, Constitution of the United States and by Article I, Section 6, Alabama Constitution of 1901.

In answer to these contentions the Supreme Court of Alabama in its opinion stated as follows:

> "Petitioner next urges a reversal in that "illegal and improper evidence was admitted and must be presumed considered." Rule 18, Section B, of the "amended rules governing the conduct of attorneys in Alabama," provides:
>
> "In the taking of testimony by the grievance committee of the Board or by a Commissioner, as herein provided, or by the Board, it shall not be required or necessary that objection be made to any evidence which may be offered by either party, but the Board shall consider only such evidence as is, in its opinion, relevant, material, or competent and it shall not consider any testimony which, in its opinion, is irrelevent, immaterial or incompetent."
>
> ". . . the rule is established where there is no specific ruling on competency of evidence, as in the case before us, this Court will presume that the Board considered only competent evidence, and that irrelevant, incompetent or immaterial evidence was disregarded. On this review we so limit ourselves."

The petitioner was therefore told by the Alabama Supreme Court that since its specified rules did not allow him the right in a disbarment proceeding to have irrelevant, incompetent and illegal evidence excluded from the record—the very record that was submitted to the Board of Commissioners who had not observed any witnesses personally during their testimony—to decide the fate of petitioner as a practicing attorney in the State of Alabama, now also

precluded the Supreme Court of Alabama from ruling on said evidence because there had been no specific rulings on competency made by the Commissioner or the Board.

It is manifestly unfair to deny this right to petitioner when it is accorded to every legitant in a civil action, and to every defendant in a criminal action. It can scarcely be said that because the instant action is neither criminal nor civil that petitioner is entitled to no procedural safeguards.

The procedural devices employed by the Board are clearly contra to those doctrines enunciated in *Berger v. California,* __ U. S. __, 21 L ed 2d 508, 89 S. Ct. ___ and *Pointer v. State of Texas,* 380 U. S. 400, 13 L ed 2d 923, 85 S. Ct. 1065, with respect to confrontation of witnesses before the Board which passed judgment in some instances.

In this proceeding below testimony was taken by depositions outside the State of Alabama (R. pp. 296-304), (R. pp. 330-349), and petitioner's right to attend the taking of said deposition and to have an opportunity to examine the witnesses was governed solely by his own financial ability to travel to that distant location.

The Board of Commissioners of the Alabama State Bar which handed down the supreme punishment of disbarment to petitioner did not hear the testimony in person of any witness in the proceeding, nor did it have the opportunity to observe the demeanor of any witness. Its final judgment of disbarment was based solely upon the depositions of said witnesses which contained highly prejudicial testimony and had been taken without giving petitioner the right to object to any questions or forms of questions propounded to said witnesses; or to have stricken for proper cause any immaterial, irrelevant or illegal testimony contained therein.

Petitioner submits that this constituted a denial of due process and equal protection to him and denied to him a fair hearing within the meaning of Amendment XIV, Constitution of the United States.

CONCLUSION

For the reasons above stated, it is respectfully submitted that the petition for writ of certiorari in this case should be granted.

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THE STATE OF ALABAMA—
JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1968-69

In the Matter of John Ike Griffith
(In re: John Ike Griffith

3 Div. 303

Board of Commissioners of Alabama State Bar)

Petition for Review

PER CURIAM.

The proceedings before us is a petition for review taken pursuant to Title 46, § 25, Code of Alabama 1940, as last amended, by John Ike Griffith from a resolution adopted by the Board of Commissioners of the Alabama State Bar disbarring petitioner.

The Grievance Committee of the Alabama State Bar Association filed four original charges against petitioner on July 10, 1964. Charges one through three relate to a violation of, or failure to comply with, Rule 25, Section A, of the Rules Governing the Conduct of all Persons admitted to the Practice of Law in the State of Alabama.

The substance of charges one and two is that petitioner submitted to the Inferior Court of Geneva County, Alabama, fifteen divorce cases, in which cases he served as referring or forwarding attorney for the complainant and wherein the bill of complaint represented to the court, that either the complainant or respondent was a bona fide resident of the State of Alabama; the truth being that petitioner knew or had reasonable cause to believe that neither complainant nor respondent was a bona fide resident of the State of Alabama.

Charge three of the original complaint avers a violation of Rule 25, Section A, in that petitioner while serving as referring or forwarding attorney for the complainant, obtained approximately forty-one divorces in the Law and Equity Court of Winston County (Haleyville Division), and petitioner knew or had reasonable cause to believe that in one or more of said cases, neither complainant nor the respondent was a bona fide resident of the State of Alabama as was represented to the Law and Equity Court of Winston County, Alabama, Haleyville Division.

Charge four avers that petitioner is guilty of conduct unbecoming an attorney at law, in violation of Rule 36, Section A. The substance of this charge is that in violating Rule 25, Section A, as alleged in charges one, two and three, petitioner is guilty of conduct unbecoming an attorney at law.

Subsequently, the Grievance Committee filed additional charges numbered seven, eight, nine, ten, eleven and twelve against petitioner.

Charge seven avers a violation of Rule 25, Section A, in that petitioner aided in the prosecution of a divorce suit in the Law and Equity Court of Winston County (Double Springs Division), Alabama, in which a divorce was granted by that court dissolving the marriage of Noreen Mecelli and James A. Mecelli upon bill of complaint, answer and waiver, wherein it was represented to that court that complainant was a bona fide resident of the State of Alabama, the truth being that neither the complainant nor the respondent was a bona fide resident of the State of Alabama, and petitioner knew or had reasonable cause to believe that neither was a resident of Alabama, as was represented to the court in the divorce proceeding.

The allegations of charge eight are to the effect that petitioner's conduct in representing to the Winston County Court of Law and Equity (Double Springs Division), that Noreen Mecelli and James A. Mecelli were bona fide residents of Alabama, when in fact they were not, was a violation of Rule 36, Section A which proscribes conduct unbecoming an attorney at Law.

Charge nine alleges that petitioner submitted approximately forty-one divorce cases to the Winston County Court of Law and Equity (Haleyville Division) in which cases petitioner served as the attorney for the complainant. The bill of complaint represented to the court that either complainant or respondent was a bona fide resident of Alabama when petitioner knew or had reasonable cause to believe that neither complainant nor respondent was a bona fide resident of Alabama.

Charge ten alleges that petitioner violated Rule 36, Section A, pertaining to conduct unbecoming an attorney at law in that he represented to the Winston County Court of Law and Equity (Haleyville Division) that certain complainants were residents of Alabama, when petitioner knew or had reasonable cause to believe that they were not bona fide residents of the State of Alabama.

We need not consider charge eleven in view of the fact that petitioner was found not guilty on that charge.

Charge twelve also alleges a violation of Rule 36, Section A, in that petitioner made representations to the circuit court of Marion County, Alabama concerning the residences of certain of his clients, which representations were false.

An additional charge, thirteen, was filed on May 29, 1966 but was dismissed on motion of counsel for the Bar Association based on the authority of *Spevack v. Klein*, 385 U.S. 511, 87 S. Ct. 625, 17 L. Ed. 2d 574.

On March 30, 1967 a new complaint containing three new charges was filed.

Charge one of the new complaint charges that petitioner submitted to the circuit court of St. Clair County, Alabama, a divorce case (Leon J. Dasher v. Janette M. Southall Dasher, Case No. 237-A) in which the bill of complaint and deposition of complainant represented to the court that the complainant was a bona fide resident of the State of Alabama, when the petitioner knew or had reasonable cause to believe that neither complainant nor the respondent was a bona fide resident of the State of Alabama, in violation of Rule 25, Section A.

Charge two of the new complaint also charges that in the case described in charge one petitioner violated Rule 25, Section A.

Charge three of the new complaint charges that by the acts described in charge one petitioner is guilty of conduct unbecoming an attorney, in violation of Rule 36, Section A.

Petitioner filed a plea in abatement to the proceedings, which plea was found to be without merit and was overruled by the Board.

It also found petitioner's motions to quash to be without merit and they were overruled. Request for a jury trial was denied, and at a special meeting of the Board of Commissioners of the Alabama State Bar on July 19, 1967 the Board considered the evidence presented by the Grievance Committee and that presented by petitioner John Ike Griffith.

The Board found petitioner guilty of charges 1, 2, 3, 4, 7, 8, 9, 10 and 12 of the original complaint and charges 1, 2, and 3 of the new complaint. Having so found, the Board adopted a resolution disbarring Mr. Griffith.

The gist of the various charges in this proceeding is that petitioner violated certain of the rules governing the conduct of attorneys in Alabama, in that he has made various false representations to courts in this State pertaining to the residency of certain of his clients in so-called "quickie divorce" cases. These rules provide as follows:

Rule 25, Section A, as amended:

"25. No person heretofore or hereafter admitted to practice law in Alabama shall:

"(a) Knowingly or wilfully make any false representations of fact to any judge, court, or jury to induce a favorable action or ruling by either;

"(b) File or prosecute or aid in the filing or prosecution of any suit, cross bill, or proceeding seeking a divorce in a Court in Alabama as attorney or solicitor for a complainant or cross complainant therein or serve as referring or forwarding attorney for such complainant or cross complainant with knowledge or reasonable

cause to believe that neither party to such suit, cross bill, or proceeding is at the time of the filing of the bill of complaint or cross bill of complaint therein, a bona fide resident of the State of Alabama;

"(c) While acting as attorney for either party in any suit for divorce in any Court in Alabama represent to any Court or conspire with any party, attorney, or person to represent to the Court that either party to such suit is a bona fide resident of Alabama, knowing such representation to be false." Rule 36, Section A, as amended:

"36. No person licensed to practice law in the courts of the State of Alabama shall be guilty of any conduct unbecoming an attorney at law."

Assignment of Error I

The first ground upon which petitioner urges a reversal of his disbarment is that the Board of Commissioners is an illegally constituted body, in that it is elected in violation of the "one man-one vote" principle, and its resolution disbarring petitioner is therefore void. Petitioner insists that this proposition was properly raised in the proceedings below by his plea in abatement and motion to quash, and that failure to respond to those pleadings has resulted in a denial of due process.

We recently stated in *In Re McKay,* 280 Ala. 174, 191 So, 2d 1:

"The question for determination in disbarment or disciplinary cases is the fundamental one of whether an attorney who is charged with professional dereliction should be permitted to continue in his office. Basically, the proceeding is an inquiry into the conduct of an attorney to determine whether action should be taken by a court to protect the public or the dignity of the court. * * *

"An attorney must be accorded due process in disbarment and disciplinary proceedings, and the requirements of due process are met when the attorney is

served with charges or specifications reasonably informing him of the charges against him and the attorney is thereafter accorded a hearing with an opportunity to defend. * * *

"The above requirements of due process being met, formal and technical pleadings are not essential, nor do they have any place in a disbarment proceeding. In Re Fite, 228 Ala. 4, 152 So. 246; McCord v. State, 220 Ala. 466, 126 So. 873; Ex parte Thompson, 228 Ala. 113, 152 So. 229, 107 A.L.R. 671; Ex parte Grace, 244 Ala. 267, 13 So. 178."

In order to satisfy the requirements of our due process, our initial inquiry is to determine if the requisite notice of the charges against him was given to petitioner and if he was accorded a hearing during which he could defend against those charges.

We have examined the record and are satisfied that petitioner was properly notified of the charges and proceedings against him. The proceedings below commenced February 9, 1965 and have continued to the present, interspersed with numerous hearings and continuances. It would serve no useful purpose to relate the exact time or substance of each. We are further satisfied that there was no error in not responding to petitioner's pleading before the Commissioner, and in overruling the plea in abatement and motion to quash by the Bar Commissioners.

This is so in view of our holding in *In Re McKay*, supra, that there is no need for "formal and technical" pleadings in disbarment proceedings.

The contention of petitioner urging that the Board of Commissioners of the Alabama State Bar is illegally and unconstitutionally constituted (malapportioned) in violation of the Equal Protection Clause of the Fourteenth Amendment, United States Constitution ("one man-one vote") has been decided adversely to petitioner in *In Re Sullivan*, 3 Div. 277 [MS], Ala. Sup., decided January 30, 1969.

For the above stated reasons, petitioner's first ground urging reversal is without merit.

Petitioner's next contention is that the Board is established in violation of the doctrine of separation of powers in that he should have been afforded a judicial tribunal separate and apart from the prosecuting authority.

Our decision in *Ex parte Thompson,* 228 Ala. 113, 152 So. 229, is controlling on this point. There we found express constitutional authority for conferring judicial functions upon the Board in Section 139 of the Alabama Constitution of 1901. It was stated in *Thompson,* supra, that:

> "We fail to see in the creation of the board of commissioners of the state bar with the powers conferred, any transgression of constitutional bounds by the Legislature * * *.
> * * *"

Consequently, we find no merit in petitioner's contention with respect to separation of powers. See, also, *Sullivan,* supra.

Assignment of Error II

Petitioner strongly insists that he was entitled to a trial by jury. The question of whether an attorney is entitled to trial by jury in disbarment proceedings has been voluminously researched and argued in jurisdictions throughout the country. This court examined and discussed the question in detail in *Thompson,* supra, where it was held:

> "* * * [T]hat the courts have the inherent power to suspend or to remove attorneys without trial by jury. * * *"

That proposition has been consistently followed in this jurisdiction and in other jurisdictions. Alhough petitioner urges us to reverse *Thompson,* supra, we reaffirm our adherence to the principle that courts have inherent power to suspend or remove attorneys without trial by jury in order to protect the dignity of the court, and maintain the respect of the public for our legal system. We, therefore, find no error in the refusal to grant petitioner a trial by jury.

Assignment of Error III

The next ground upon which petitioner alleges error has been before this court previously in *Ex. parte Griffith,* 278 Ala. 344, 178 So. 2d 169, cert. den. Griffith v. Board of Commissioners of Alabama Bar, 86 S. Ct. 548, 382 U.S. 988, 15 L. Ed. 2d 475, it being his contention that proceedings before the Commissioners and Grievance Committee are void in that the members had not taken the oath of office required by Article 16, Section 279, Constitution of Alabama, 1901. This question was also raised in *Ex parte Huie,* 278 Ala. 330, 178 So. 2d 156. In both *Griffith* and *Huie,* supra, we found the oath required by Section 279, supra, applies only to state officers. We stated in *Huie,* supra, as follows:

> "* * * We do not think that either the examining commissioner or the Board of Commissioners are state officers in the constitutional sense, and, therefore, are of opinion that Section 279 has no application. These commissioners are officers of the State Bar, which is an association of attorneys. The members of the association are not state officers.
>
> "The attorney does not hold an office or public trust in the constitutional or statutory sense of that term, but is an officer of the court exercising a privilege or franchise. In a sense he is an officer of the state with an obligation to the public no less significant than his obligation to his clients. It is an office held during good behavior, and is one of which he can be divested only upon good cause shown and after proper judicial proceedings. * * *"
> * * *

We hold there is no error here.

Assignment of Error IV

Petitioner next urges a reversal in that "illegal and improper evidence was admitted and must be presumed considered." Rule 18, Section B, of the "Amended Rules Governing the Conduct of Attorneys in Alabama," provides:

"In the taking of testimony by the Grievance Committee of the Board or by a Commissioner, as herein provided, or by the Board, it shall not be required or necessary that objection be made to any evidence which may be offered by either party, but the Board shall consider only such evidence as is, in its opinion, relevant, material, or competent and it shall not consider any testimony which, in its opinion, is irrelevant, immaterial or incompetent."

The rule is established that where there is no specific ruling on competency of evidence, as in the case before us, this court will presume that the Board considered only competent evidence, and that irrelevant, incompetent or immaterial evidence was disregarded. On this review we so limit ourselves.

We, therefore, find this proposition urging reversal to be without merit.

Assignment of Error V

The final ground upon which petitioner seeks a reversal is that there is insufficient evidence to support a resolution of disbarment.

We have carefully read the record in this case and are of the opinion that there is sufficient legal evidence, and reasonable inferences therefrom, to sustain the charges upon which petitioner was found guilty; and, to support his disbarment. We do not feel compelled to set out all the evidence in this case, as it would serve no useful purpose.

Nevertheless, a brief recapitulation of a portion of the evidence in one divorce case, embraced in charge three, may be in order as illustrative of the evidence before the Board. Harold Schocket testified by deposition (1), that he was a resident of New Jersey; that he had obtained a divorce from his wife, Mrs. Eleanor Schocket, in the State of Alabama, sometime in 1962. His wife sued him in 1965 in a New

(1) See, *In re Sullivan*, supra, for a discussion of the method of taking depositions in disbarment proceedings.

Jersey court to set aside the Alabama divorce; and the Alabama divorce decree was held null and void by the Superior Court of New Jersey, Chancery Division, Essex County. With reference to obtaining the Alabama divorce, petitioner Griffith made the hotel reservation for him at the Hotel Tutwiler in Birmingham, Alabama; he signed an affidavit which stated he intended to be a resident of the State of Alabama on the advice of petitioner, who had informed him that he need only be in the State for twenty-four hours; he never went to court. He asked petitioner if he could make a one o'clock plane the next afternoon, but petitioner said, "Take the afternoon plane out. It's better that way." He informed petitioner he was returning to New Jersey "right after everything was taken care of;" he made his return trip by plane at 5:00 p.m. (less than twenty-four hours after he arrived in Alabama). The record is replete with evidence of a similar nature which we conclude is sufficient to support the resolution of disbarment.

Having carefully studied and considered the well prepared briefs of counsel, and the evidence, we are of the opinion that the resolution of disbarment must be affirmed.

AFFIRMED.

All the Justices concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 6th day of Feb., 1969.

J. O. SENTELL

Clerk Supreme Court of Alabama

II

THE SUPREME COURT OF ALABAMA

THURSDAY, FEBRUARY 6,1969

THE COURT MET PURSUANT TO ADJOURNMENT

PRESENT: CHIEF JUSTICE LIVINGSTON AND ASSOCIATE JUSTICES LAWSON, SIMPSON, MERRILL, COLEMAN, HARWOOD AND BLOODWORTH

3rd Div. 303

In the Matter of: John Ike Griffith

PETITION FOR REVIEW

(Re: John Ike Griffith v. Board of Commissioners of Alabama State Bar)

Come the parties by attorneys, and the Petition for Review being argued and submitted and duly examined and understood by the Court,

IT IS CONSIDERED, ORDERED AND ADJUDGED that the resolution, order and judgment of the Board of Commissioners of the Alabama State Bar, finding John Ike Griffith guilty of the charges preferred against him and disbarring the said John Ike Griffith from the practice of law, be and the same is hereby affirmed in all things; said order of disbarment to begin when the final judgment in this cause shall have been entered in this Court.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that the costs incident to these proceedings be and the same are hereby taxed against the petitioner, John Ike Griffith, for which costs let execution issue accordingly.

Per Curiam Opinion

All the Justices concur.

III

STATE OF ALABAMA JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA

THIRD DIVISION NO. 303

OCTOBER TERM, 1968-1969

IN THE MATTER OF JOHN IKE GRIFFITH

In re: JOHN IKE GRIFFITH

vs.

(BOARD OF COMMISSIONERS
ALABAMA STATE BAR)

APPLICATION FOR REHEARING
MOTION TO STAY EXECUTION

Comes, JOHN IKE GRIFFITH, appellant in the above cause, and moves this Honorable Court to grant him a rehearing, and to reverse, revise and hold for naught its judgment rendered on, to-wit: February 6, 1969, and to enter its order reversing and/or revising said judgment.

Appellant further moves the Court, in accordance with Rule 34, Revised Rules of the Supreme Court of Alabama, 1 February, 1955, that the execution of the judgment be stayed or suspended during the pendency of this application for rehearing.

Submitted herewith is brief and argument in support of application.

ELLIOTT, WRIGHT & TAYLOR

Attorneys for Appellant-Petitioner

IV

THE SUPREME COURT OF ALABAMA

THURSDAY, MARCH 6, 1969

THE COURT MET PURSUANT TO ADJOURNMENT

PRESENT: CHIEF JUSTICE LIVINGSTON AND ASSOCIATE JUSTICES LAWSON, SIMPSON, MERRILL, COLEMAN, HARWOOD AND BLOODWORTH

3rd Div. 303

In the Matter of: John Ike Griffith

(Re: John Ike Griffith v. Board of Commissioners of the Alabama State Bar)

PETITION FOR REVIEW

IT IS ORDERED that the application for rehearing filed on February 21, 1969, be and the same is hereby overruled.

APPENDIX B

B1

Constitution, Statutes and Rules Involved

I

Constitution of the United States, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

II

Constitution of the United States, Amendment XIV, Section I.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

III

Title 28, Section 1257 (3), United States Code.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

IV

Title 34, Section 27, Code of Alabama, 1940

For abandonment, twelve months' residence to be proved.

No bill can be filed for a divorce on the ground of voluntary abandonment, unless the party applying therefor, whether husband or wife, has been a bona fide resident citizen of this state for twelve months next preceding the filing of the bill which must be alleged in the bill and proved; provided however, the provisions of this section shall not be of force and effect when the court has jurisdiction of both parties to the cause of action.

V

Title 34, Section 29, Code of Alabama, 1940

If defendant a nonresident, a year's residence by plaintiff must be proved.

When the defendant is a nonresident, the other party to the marriage must have been a bona fide resident of this state for one year next before the filing of the bill which must be alleged in the bill and proved; provided however, the provisions of this section shall not be of force and effect when the court has jurisdiction of both parties to the cause of action.

VI

Title 46, Section 25, Code of Alabama, 1940

The board of commissioners shall have power: (a) To determine, by rules, the qualifications and requirements for admission to the practice of law: (b) to conduct through a board of examiners, hereinafter provided for, the examination of applicants; and such board of examiners shall certify to the supreme court the names of the applicants found to be qualified; such certifications shall entitle such persons to be enrolled in the bar of the state and to practice law, provided the fees hereafter required are paid; (c) subject to the approval of the supreme court, to formulate rules governing the conduct of all persons admitted to practice, and

to investigate, or cause to be investigated, and to pass upon, all complaints that may be made concerning the professional conduct of any person who has been, or may hereafter be, admitted to the practice of the law; (d) subject to the approval of the supreme court, to formulate rules governing the re-instatement of members of the bar who have been disbarred, and to pass upon all petitions for reinstatement; (e) to appoint one or more committees from the membership of the board, or from the membership of the entire bar, or partly from one and partly from the other, to take evidence in connection with any complaint filed against any attorney and forward the same to the board. In all cases, testimony with reference to such charges shall be taken at the courthouse of the county of the residence of the party charged, provided the evidence of witnesses residing outside of such county may be taken in the same manner as provided by law for the taking of depositions in civil cases. The state solicitor of the circuit in which such accused attorney resides shall prosecute any such charge or case, interrogate the witnesses, introduce the evidence in support of such charges, and, when requested by any member of the board, argue the cause before the board. The board shall administer such discipline, by public or private reprimand, suspension from the practice of law, or exclusion and disbarment therefrom, as the case shall, in their judgment warrant. A majority of the board shall constitute a quorum and the majority of those present (if a quorum be present) shall be empowered to act as and for the entire board. The supreme court may, and on petition of the party aggrieved must, in any case of suspension or disbarment from practice, review the action of the board, and may, on its own motion and without the certification of any record, inquire into the merits of the case and take any action agreeable to their judgment. Rules regulating the manner of such review and providing for the certification of the evidence, or if the supreme court desire, the taking of additional evidence, shall be promulgated by said board and become effective upon approval by the supreme court. (f) To make such rules and by-laws not in conflict with any of the terms of this chapter concerning the selection and tenure of its officers and committees and their powers and duties, and generally for the

control and regulation of the business of the board and of the state bar. (g) To hold and conduct educational and social meetings and activities among the members of the bar, to publish journals and generally to do such things as in their judgment may tend to improve the educational and ethical standing of brench and bar. (h) Should any vacancies occur on said board, to fill such vacancies by appointment of a member of the state bar from the judicial circuit in which said vacancy exists and such appointee shall hold for the time of the unexpired term or pending the election of his successor. (i) To establish circuit or branch associations of the state bar and if circuit associations are established, the member of the board from said circuit shall be ex officio the president of such circuit association. Said circuit or branch association shall have no authority to suspend or disbar attorneys and in all matters shall be subordinate to the authority of the board. If any member of said board is a party to the preferment of charges for disbarment or suspension of any lawyer, or there exists as against any member of such board any cause provided by law for the disqualifications of judges or jurors in civil or criminal cases, such member shall be disqualified from sitting as a member of said board in the hearing of such charges. Said board shall have no authority, nor shall it in any way undertake, to regulate the fees or charges of lawyers for the rendition of their professional services.

VII

ALABAMA CONSTITUTION 1901

ARTICLE 1, SECTION 11

That the right of trial by jury shall remain inviolate.

VIII

ALABAMA CONSTITUTION 1901.

ARTICLE 1, SECTION 6

That in all criminal prosecutions, the accused has a right to be heard by himself and counsel, or either; to demand the nature and cause of the accusation; and to have a copy

thereof; to be confronted by th witnesses against him; to have compulsory process for obta ng witnesses in his favor; to testify in all cases, in his own behalf, if he elects so to do; and, in all prosecutions by indictment, a speedy, public trial, by an impartial jury of the county or district in which the offense was committed; and he shall not be compelled to give evidence against himself, nor be deprived of life, liberty, or property, except by due process of law; but the legislature may, by a general law, provide for a change of venue at the instance of the defendant in all prosecutions by indictment, and such change of venue, on application of the defendant, may be heard and determined without the personal presence of the defendant so applying therefor; provided, that at the time of the application for the change of venue, the defendant is imprisoned in jail or some legal place of confinement.

IX

ALABAMA CONSTITUTION 1901

ARTICLE 6, SECTION 139

The judicial power of the state shall be vested in the senate sitting as a court of impeachment, a supreme court, circuit courts, chancery courts, courts of probate, such courts of law and equity inferior to the supreme court, and to consist of not more than five members, as the legislature from time to time may establish, and such persons as may be by law invested with powers of a judicial nature; but no court of general jurisdiction, at law or in equity, or both, shall hereafter be established in and for any one county having a population of less than twenty thousand, according to the next preceding federal census, and property assessed for taxation at a less valuation than three million five hundred thousand dollars.

X

ALABAMA CONSTITUTION 1901

ARTICLE 3, SECTION 42

DISTRIBUTION OF POWERS OF GOVERNMENT

The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

XI

ALABAMA CONSTITUTION 1901

ARTICLE 3, SECTION 43

In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

XII

RULE 25, SECTION A, as last amended.

Board of Commissioners of Alabama State Bar

25. No person heretofore or hereafter admitted to practice law in Alabama shall

(a) knowingly or willfully make any false representations of fact to any judge, court, or jury to induce a favorable action or ruling by either;

(b) File or prosecute or aid in the filing or prosecution of any suit, cross bill, or proceeding seeking a divorce in a Court in Alabama as attorney or solicitor for a complainant or cross complainant therein

or serve as referring or forwarding attorney for such complainant or cross complainant with knowledge or reasonable cause to believe that neither party to such suit, cross bill, or proceeding is at the time of the filing of the bill of complaint or cross bill of complaint therein, a bona fide resident of the State of Alabama;

(c) While acting as attorney for either party in any suit for divorce in any Court in Alabama represent to the Court or conspire with any party, attorney, or person to represent to the Court that either party to such suit is a bona fide resident of Alabama, knowing such representation to be false.

XIII

RULE 36, SECTION A, as last amended.

Board of Commissioners of Alabama State Bar

36. No person licensed to practice law in the courts of the State of Alabama shall be guilty of any conduct unbecoming an attorney at law.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]. 1969.

No. [redacted] 176

JOHN IKE GRIFFITH,
Petitioner,

vs.

BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR,
Respondent.

BRIEF OF RESPONDENT.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968.

No. 1460.

JOHN IKE GRIFFITH,
Petitioner,

vs.

BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR,
Respondent.

BRIEF OF RESPONDENT.

INTRODUCTION.

This Brief of Respondent is filed in opposition to a Petition for Writ of Certiorari to the Supreme Court of Alabama. Respondent respectfully submits that the Petitioner has failed to submit any federal question of substance not heretofore determined by this Court or decided in a way probably not in accord with the applicable decisions of this Court.

QUESTIONS PRESENTED.

The Petitioner has presented four questions. The Respondent submits that the questions presented are more clearly and accurately stated as follows:

QUESTION A: Does the United States Constitution require the federal and state courts to afford a trial by jury to an attorney in a disbarment proceeding?

QUESTION B: Where the statutory law of the State of Alabama as interpreted by the Supreme Court of Alabama requires that at least one party to a divorce proceeding be a bona fide resident of the State, does Rule 25, Section A, Rules of the Supreme Court of Alabama Governing the Conduct of Attorneys in Alabama, which prohibits attorneys from introducing perjured testimony on the issue of residency "with knowledge or reasonable cause to believe" that such testimony is false, raise a substantial federal question under the due process and equal protection clauses of the Fourteenth Amendment, United States Constitution?

QUESTION C: Does the due process clause of the Fourteenth Amendment, United States Constitution, prohibit the Judicial Department of the State, through the Supreme Court of Alabama and the Board of Commissioners of the Alabama State Bar, as an arm of said Court, from enacting rules governing the conduct of attorneys and investigating, charging and determining the guilt or innocence of attorneys charged with a violation of such rules?

QUESTION D: Does the use of depositions in a disciplinary proceeding against an attorney, which proceeding is not a criminal prosecution and can result in a reprimand, suspension or disbarment, but cannot result in fine or imprisonment, raise a substantial constitutional question under the Sixth and Fourteenth Amendments, United States Constitution?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED.

In addition to the constitutional provisions, statutes and rules set forth in the Appendix to the Petition for Writ of Certiorari, the Respondent calls the following to the attention of the Court as set forth below in the Appendix to this Brief of Respondent:

Title 46, § 36, Code of Alabama, 1940;

Rules of the Alabama Supreme Court Governing the Conduct of Attorneys in Alabama;

Rule 3, Sec. B
Rule 6, Sec. B
Rule 10, Sec. B
Rule 12, Sec. B
Rule 13, Sec. B
Rule 19, Sec. B

ARGUMENT.

QUESTION A.

Does the United States Constitution require the federal and state courts to afford a trial by jury to an attorney in a disbarment proceeding?

It would present a strange anomaly if the due process and equal protection clauses of the Fourteenth Amendment, United States Constitution, granted to a litigant in the state courts greater procedural safeguards than the Bill of Rights, United States Constitution, grants to a similar litigant in the federal courts. Certainly the privilege of membership in the bars of the various federal courts is of a dignity and value equal to such membership in the bars of the state courts.

Therefore, the initial inquiry must be: Is a federal court required to grant a trial by jury before striking an attorney's name from the roster of such court's officers?

This question was clearly and emphatically answered by this Court in **Ex parte Wall**, 107 U. S. 265, which involved the disbarment of an attorney by a United States District Judge, wherein the Court held that a proceeding to disbar an attorney is one within the proper jurisdiction of the court of which he is an attorney, and does not violate the constitutional provisions which require an indictment and trial by jury in criminal cases, as it is not a criminal proceeding to punish the attorney, but intended to protect the court from the ministrations of persons unfit to practice as attorneys.

The Petitioner concedes that he has no right to trial by jury under the Alabama Constitution. The Supreme Court of Alabama in **Ex parte Thompson**, 228 Ala. 113,

152 So. 229, in an opinion, which presented an exhaustive review of the authorities on the subject, held that the Alabama Constitution guaranteed the right to trial by jury as it existed at common law; that the courts possessed the inherent right to discipline attorneys as officers of the courts (citing **Ex parte Wall**, supra), and that the Alabama Constitution did not preserve the jury trial provision in a pre-existing territorial statute, one justice observing that the Alabama Constitution itself provided that territorial laws should be continued in force only until altered or repealed by the legislature. **Thompson** has been consistently followed in **In re Fite**, 228 Ala. 4, 152 So. 246; **Ex parte Messer**, 228 Ala. 16, 152 So. 244; **Ex parte Walker**, 228 Ala. 130, 152 So. 246; **In re McKay**, 280 Ala. 174, 191 So. 2d 1, and was followed by the court below in the instant case.

The supreme court of a state is the final arbiter on the question of the conflict between a state statute and the state constitution. **Walker v. Savinet**, 92 U. S. 90; **Stone v. Wisconsin**, 94 U. S. 181; **Merchants and Manufacturers National Bank of Pittsburg v. Pennsylvania**, 167 U. S. 461; **Thornton v. Duffy**, 254 U. S. 361; **Terrace v. Thompson**, 263 U. S. 197. In **Randall v. Brigham**, 74 U. S. 523, this Court held that the decision of the supreme court of a state that the removal of an attorney without formal legal process is not in violation of the constitution of the state, it not being called in question by any conflicting decision of this Court, is conclusive upon this Court. The same applies to the right to trial by jury.

The above cited authorities establish that this Court will not question the Supreme Court of Alabama's interpretation of the Alabama Constitution.

Since the United States Constitution guarantees to Petitioner no right to trial by jury in a disbarment pro-

ceeding in the federal courts, *a fortiori*, it guarantees no such right in the state courts.

The Petitioner does not present any federal question for review.

QUESTION B.

Where the statutory law of the State of Alabama as interpreted by the Supreme Court of Alabama requires that at least one party to a divorce proceeding be a bona fide resident of the State, does Rule 25, Section A, Rules of the Supreme Court of Alabama Governing the Conduct of Attorneys in Alabama, which prohibits attorneys from introducing perjured testimony on the issue of residency "with knowledge or reasonable cause to believe" that such testimony is false, raise a substantial federal question under the due process and equal protection clauses of the Fourteenth Amendment, United States Constitution?

The Supreme Court of Alabama has held that one party to divorce proceedings must be a bona fide resident of the State. **Jennings v. Jennings**, 251 Ala. 73, 36 So. 2d 236.

In **Levy v. Levy**, 256 Ala. 629, 56 So. 2d 344, and **Hilley v. Hilley**, 275 Ala. 617, 156 So. 2d 215, the Supreme Court of Alabama held that no specific period of residency in Alabama is required and that the sufficiency of the evidence on the question of residency is reviewable on appeal. In **Aiello v. Aiello**, 272 Ala. 505, 133 So. 2d 18, the Supreme Court of Alabama held that a certain party, under the circumstances, failed to set forth sufficient grounds for setting aside a final decree of divorce.

However, the validity *vel non* of the divorce decree is beside the point. The possible laches or estoppel of a party is equally beside the point. It is the conduct of the attorney with which Rule 25, Section A, is concerned.

The fact that there may be three parties to the perpetration of a fraud upon the court, namely, the complainant, the respondent and the attorney, and the circumstances are such that perhaps both complainant and respondent are estopped to challenge the validity of the decree, does not purge the attorney of wrongdoing if he, in fact, had "knowledge or reasonable cause to believe that neither party . . ." was a bona fide resident. "Rule 25, Section A, in no way departs from the applicable divorce statutes as to jurisdiction, nor the decisions thereunder, but re-enforces these principles." **In the matter of Thomas W. Sullivan,** ... Ala. ..., 219 So. 2d 346. The Petitioner erroneously assumes that attorneys practicing in other fields of the law than that of divorce practice, who submit evidence to a court with knowledge or reasonable cause to believe in its falsity, are immune from discipline. Policy has always dictated that attorneys must be disciplined for participating in a fraud upon the courts. Rule 25, Section A, merely implements this policy. It is difficult to conceive that the due process and equal protection clauses of the Fourteenth Amendment, United States Constitution, could preclude a state from attempting to prevent attorneys from perpetrating frauds upon its courts.

QUESTION C.

Does the due process clause of the Fourteenth Amendment, United States Constitution, prohibit the Judicial Department of the State, through the Supreme Court of Alabama and the Board of Commissioners of the Alabama State Bar, as an arm of said Court, from enacting rules governing the conduct of attorneys and investigating, charging and determining the guilt or innocence of attorneys charged with a violation of such rules?

Petitioner asserts that the Fourteenth Amendment, United States Constitution, prohibits the Judicial Department of the State of Alabama acting through its supreme

authority, the Supreme Court of Alabama, and the Board of Commissioners of the Alabama State Bar, an arm of said Court, from controlling the subjects of admissions and disbarments of attorneys at law. Although the Board of Commissioners of the Alabama State Bar was organized under the aegis of legislation, attorneys at law are officers of the courts and the determination of their status as such is essentially a judicial rather than a legislative or executive function. **Sullivan v. Alabama State Bar,** SCUS, OT 1968, No. 1170. The judicial department of the federal government and the judicial departments of state governments possess inherent power over the subjects of admissions and disbarments of attorneys as officers of their respective courts. **Ex parte Secombe,** 60 U. S. 9; **Ex parte Bradley,** 74 U. S. 364; **Ex parte Robinson,** 86 U. S. 513; **Ex parte Wall,** supra; **Ex parte Thompson,** supra.

Petitioner complains that he has been ". . . regulated, investigated, charged, tried, convicted and punished . . ." Petitioner fails to observe that each step in these proceedings was taken under the inherent power of the judicial department of state government, acting pursuant to statutes which do not constitute a legislative intrusion into a judicial function, but rather a legislative recognition that inherent powers in such matters vest in the judicial department.

Since we are dealing with the essential functions of the judicial department of state government, the constitutional doctrine of "separation of powers" is beside the point. However, it should be noted that Petitioner is contending that the actions of the Board of Commissioners of the Alabama State Bar and the Supreme Court of Alabama are violative of the **State** Constitution (Article 6, Section 139; Article 3, Section 42; Article 3, Section 43, Constitution of Alabama, 1901). He then advances to the conclusion that the due process and equal protection

clauses of the Fourteenth Amendment, United States Constitution, have been abridged, without any supporting argument or citation of authority. Even if we were here dealing with matters which were not within the exclusive prerogative of the judicial department, the Fourteenth Amendment leaves the states free to distribute the powers of government as they will between their legislative and judicial branches. **Dreyer v. Illinois**, 187 U. S. 71; **Missouri v. Dockery**, 191 U. S. 165; **Prentis v. Atlantic Coast Line Co.**, 211 U. S. 210; **Crowell v. Benson**, 285 U. S. 22; **International Brotherhood of Teamsters v. Hank**, 339 U. S. 470.

The Petitioner appears to grant that the issue of Alabama Constitutional law has been conclusively resolved by the Supreme Court of Alabama in Ex parte **Thompson**, supra, ". . . Thus we find express constitutional warrant for conferring upon *this board* judicial functions. . . ." and since the entire process of disciplining attorneys as officers of the courts is essentially judicial in nature and is performed under the authority of the Alabama Constitution by the Board of Commissioners as an arm of the Supreme Court of Alabama and under its ultimate supervision and control, no federal question is presented for review. As heretofore noted, this Court has held that it will not question the Supreme Court of Alabama's interpretation of the Alabama Constitution (p. 5, supra).

QUESTION D.

Does the use of depositions in a disciplinary proceeding against an attorney, which proceeding is not a criminal prosecution and can result in a reprimand, suspension or disbarment, but cannot result in fine or imprisonment, raise a substantial constitutional question under the Sixth and Fourteenth Amendments, United States Constitution?

The Petitioner in these proceedings has been afforded a full and fair hearing and has been given every opor-

tunity to present any defensive matter available to him before the Commissioner appointed to take testimony, before the Board, at which time arguments on both the law and the facts were heard, and before the Supreme Court of Alabama, where the cause was determined after the submission of written briefs and the hearing of oral argument, said Court entertaining no presumption as to the correctness of the Board's findings on the law or the facts. **Ex parte Acton**, ... Ala. ..., 214 So. 2d 685.

The Petitioner was given ample notice of the charges against him (Rule 6, Section B, Rules Governing the Conduct of Attorneys in Alabama, (A. A-2); was represented throughout all proceedings by able counsel who thoroughly examined all witnesses against him, and was afforded the opportunity to present witnesses in his own behalf or testify in his own behalf (Title 46, § 36, Code of Alabama, 1940, A. A-1).

As the Court below observed, Rule 19, Section B, provides that ". . . the Board shall consider only such evidence as is, in its opinion, relevant, material, or competent and it shall not consider any testimony which, in its opinion, is irrelevant, immaterial or incompetent." (Rule 19, § B, Rules Governing the Conduct of Attorneys in Alabama, A. A-3). The Court further stated "On this review we so limit ourselves." The Supreme Court of Alabama, therefore, affirmed the Board in finding the Petitioner guilty of the charges and fixing the discipline at disbarment upon "relevant, material and competent evidence." The Petitioner was not found guilty by a jury of laymen incapable of discerning between admissible and inadmissible evidence, but was tried by a group of his fellow attorneys and by the Justices of the Supreme Court of Alabama.

Assuming that depositions would not be admissible in "criminal prosecutions" as described in the Sixth Amend-

ment, United States Constitution, clearly the due process clause of the Fourteenth Amendment does not preclude the use of depositions in a proceeding resulting in the revocation of a professional license. Title 46, §25, Code of Alabama, 1940, provides that ". . . the evidence of witnesses residing outside of such county (residence of the party charged) may be taken in the same manner as provided by law for the taking of depositions in civil cases" (Appendix, Petition for Writ of Certiorari, B2-B4), and Rule 19, Section B, Rules of the Supreme Court of Alabama Governing the Conduct of Attorneys in Alabama, provides for ". . . depositions . . . as provided by law" (A. A-3). In **Missouri ex rel. Horwitz v. North**, 271 U. S. 40, a Missouri statute was upheld which authorized the State Board of Health to revoke licenses to practice medicine for certain specified causes and provided that: "Testimony may be taken by deposition to be used in evidence at the trial of such charges before the Board in the same manner and under the same rules and practice as is now provided for the taking of depositions in civil cases."

True, the Supreme Court of Alabama in **Ex Parte Messer**, 228 Ala. 16, 152 So. 244, denominated disciplinary proceedings against attorneys as quasi criminal in nature, but expressly held that depositions were admissible. It should be noted that the Petitioner, through his attorney, attended the taking of the depositions and subjected the witnesses to thorough cross-examination (R. 296-304, 330-349). A number of states have held that depositions are admissible in disciplinary proceedings against attorneys. **In re Morganstern**, 61 Cal. App. 702, 215 P. 721; **State ex rel. Kehoe v. McRae**, 49 Fla. 389, 38 So. 605; **Florida ex rel. Bar Asso. v. Junkin** (1956, Fla.), 89 So. 2d 481; **People v. Stonecipher**, 271 Ill. 506, 111 N. E. 496; **State v. Mosher**, 128 Iowa 82, 103 N. W. 105; **In re Wellcome**, 23 Mont. 259, 59 P. 711; **State v. Priest**, 118 Neb. 47, 223 N. W. 635. The

rationale of such cases is found in the fact that such proceedings are not "criminal prosecutions" resulting in fine or imprisonment but have as their sole function the purging of the role of legal practitioners of an unworthy or disreputable member. **Ex Parte Wall,** supra.

The fact that the witnesses did not personally appear before the Board of Commissioners of the Alabama State Bar or before the Supreme Court of Alabama raises no substantial federal question for review. The Petitioner was afforded hearings before both bodies and presented argument on the law and the facts. **State ex rel. Wedderburn v. Bliss,** 12 App. D. C. 485; **McVicar v. State Board of Law Examiners,** 6 F. 2d 33 (D. C. Wash. 1925).

The Petitioner was given ample notice of the nature of the charges lodged against him. He was given full and fair hearings before the Commissioner appointed to take testimony, with an opportunity to present testimony in his defense. Petitioner presented argument on both the law and the facts before the Board of Commissioners and before the Supreme Court of Alabama. "The due process clause does not guarantee to a citizen of a State any particular form or method of state procedure. Its requirements are satisfied if he has reasonable notice, and reasonable opportunity to be heard and to present his claim or defence, due regard being had to the nature of the proceedings and the character of the rights which may be affected by it." **Missouri ex rel. Horwitz v. North,** supra.

The cases cited by the Petitioner are completely irrelevant to the instant proceedings. **International Shoe Company v. Washington,** 326 U. S. 310, dealt with whether a party was "doing business" within a state, and **Berger v. California,** 89 S. Ct. 540, and **Pointer v. Texas,** 380 U. S. 400, involved "criminal prosecutions".

CONCLUSION.

The Petitioner has not raised any federal question for review. For the reason stated herein, it is respectfully submitted that the Petitioner's Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX.

STATUTES AND RULES INVOLVED.

I.

TITLE 46, SECTION 36, CODE OF ALABAMA, 1940.

§ 36. (6236) **Rights of accused member.** Any member of the bar complained of shall have notice and opportunity to defend by the introduction of evidence and the examination of witnesses called against him, and the right to be represented by counsel. He shall also have the right to require the secretary to summon witnesses to appear and testify or produce books, papers, documents or other writings necessary or material to his defense in like manner as above provided.

II.

RULE 3, SECTION B, RULES OF THE ALABAMA SUPREME COURT GOVERNING THE CONDUCT OF ATTORNEYS IN ALABAMA.

3. **Contents of Complaint.** It shall be sufficient for any complaint against any attorney to charge in writing that such an attorney has violated or failed to comply with one or more of the rules, referring to such rule or rules by the numbers hereinbefore set forth, and such specification of the conduct complained of as will fairly and reasonably give the accused reasonable information of the acts or offenses complained of.

III.

RULE 6, SECTION B, RULES OF THE ALABAMA SUPREME COURT GOVERNING THE CONDUCT OF ATTORNEYS IN ALABAMA.

6. **Filing and Service of Complaint.** One copy of such complaint shall be filed with the Secretary and one copy thereof shall be served upon the accused attorney in person within a reasonable time after the filing thereof, and proof of such service shall be promptly filed with the Secretary . . .

IV.

RULE 10, SECTION B, RULES OF THE ALABAMA SUPREME COURT GOVERNING THE CONDUCT OF ATTORNEYS IN ALABAMA.

10. **Defendant's Plea.** Within twenty days from the service of such complaint upon such attorney, the accused attorney shall file in the office of the Secretary his written plea or pleas. If no plea be filed within the said time, the Board shall proceed as if a plea of the general issue had been filed.

V.

RULE 12, SECTION B, RULES OF THE ALABAMA SUPREME COURT GOVERNING THE CONDUCT OF ATTORNEYS IN ALABAMA.

12. **President's Order Fixing Date, and by Whom Testimony Taken.** The evidence may be taken either (a) by the Grievance Committee of the Board, or (b) by a Commissioner designated by the President, or (c) by the Board, and the President shall determine whether the evidence shall be taken by the Grievance Committee of the Board or by a Commissioner or by the Board. The

President shall thereupon make and cause to be filed with the Secretary an order fixing a date for taking the evidence upon the said complaint.

VI.

RULE 13, SECTION B, RULES OF THE ALABAMA SUPREME COURT GOVERNING THE CONDUCT OF ATTORNEYS IN ALABAMA.

13. **Notice by Secretary of Date Set for Hearing.** The Secretary shall give notice of the date so fixed to the accused attorney and to the Proctor of the Alabama State Bar by registered mail, which notice shall be given at least five (5) days prior to the date so fixed.

VII.

RULE 19, SECTION B, RULES OF THE ALABAMA SUPREME COURT GOVERNING THE CONDUCT OF ATTORNEYS IN ALABAMA.

19. **Summoning Witnesses: Production of Papers.** Witnesses may be summoned by the Board, its President, its Secretary, any Grievance Committee, any Chairman of a Grievance Committee, or by the Commissioner, their appearance and testimony required, the oath administered, depositions taken, and the production of books, papers and other documents required in all respects as provided by law.